



Guidelines For Applying T.C.A. § 3-6-305(b)(6) with Respect to Discounts Offered to State Employees and Guidelines with Respect to Participation in Charitable Events Sponsored by Employers of Lobbyists

INTRODUCTION

The following Guidelines are issued in response to questions raised during ethics training sessions and from individual inquiries. The questions fall under two separate but related scenarios, both of which call for an interpretation of T.C.A. § 3-6-305(b)(6). The first scenario is whether state employees may accept discounts on goods and services offered by entities which are employers of lobbyists, as defined by T.C.A. § 3-6-301(8). The second scenario is whether a legislative or executive branch official may receive tickets or other forms of free admission to charitable events sponsored by an employer of a lobbyist or where their participation in the event is directly made available by an employer of a lobbyist.

T.C.A. § 3-6-305(a)(1) provides that no lobbyist or employer of a lobbyist may provide a gift, directly, or indirectly, to a candidate for public office, official in the legislative branch, official in the executive branch, or immediate family of such candidate or official. The statute contains numerous exceptions to this gift prohibition,¹ including T.C.A. § 3-6-305(b)(6), which provides:

Opportunities and benefits made available to all members of an appropriate class of the general public, including but not limited to:

- (A) Discounts afforded to the general public or specified groups or occupations under normal business conditions, except that such discounts may not be based on the status of the candidate or official;
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- (C) Benefits of participation in events held within the state and sponsored by, or for the benefit of, charitable organizations as defined in §48-101-501(1), if provided by an employer of a lobbyist to an official in the executive branch or to an officials in the legislative branch; provided, that such events must be open to participation by persons other than officials in the executive branch or official in the legislative branch or such official's immediate family and any benefits received must not be enhanced due to the status of the official in the executive or legislative branch, or provided that invitations are extended to the entire membership of the general assembly.

Scenario 1 – State Employee Discounts:

All state employees are eligible for a discount from a telecommunications company or a computer company, both of which are employers of lobbyists. While the discounts appear to be “opportunities and benefits made available to all members of an appropriate class of the general public” and are “discounts afforded to the general public or specified groups or occupations under normal conditions,” the question is whether such discounts are “based on the status of the

¹ For a complete list of exceptions, see T.C.A. § 3-6-301(11) and §3-6-305(b)(1) – (11).

... official.” In other words, is the discount prohibited under the statute because it is offered to individuals based on their status as state employees?

Discussion:

The exception contained in T.C.A. § 3-6-305(b)(6)(A) permits state employees to receive gifts in the form of discounts if the discounts are opportunities and benefits made available to all members of an appropriate class of the general public, and if the discounts are afforded to the general public, specific groups, or occupations under normal business conditions. Such discounts may not be based upon the status of the candidate or official.

Accordingly, state employees can take advantage of discounts that are offered by an employer of a lobbyist to groups which may contain public officials; for example, a software company offers a 10% discount on time management software to all licensed accountants. The fact that an accountant may work for the state rather than a private enterprise is irrelevant to eligibility for the discount. In addition, state employees, as a collective group, are clearly “an appropriate class of the general public”, and discounts afforded to this “specified group” would, therefore, appear to meet the discount exception to the gift ban. The statute additionally requires, however, that the discount be given under normal business conditions, and that it not be based upon the status of the candidate or the official.

A discount which is offered by an employer of a lobbyist to the collective group of “state employees”, for example, a discount offering 10% off cellular phone service or a discount offering a free monitor upgrade on a personal computer, would appear to be a discount given under normal business conditions. In addition, a discount offered to all state employees would appear to be based upon their status as consumers, rather than upon their status within state government. The potential risk for inappropriate or undue influence on a particular state official, or the potential risk that the company is seeking to influence any governmental decision or to reward an employee for any official action is essentially eliminated when a discount is broadly made available to all state employees. The employer’s intent is to solicit a large group of potential customers rather than to unduly influence an individual state official’s decision on a matter. Taking the foregoing example of the 10% discount off personal telephone bills, if an employee switches to the employer’s service, it would be unreasonable to conclude that the employees had gained an unwarranted privilege based upon their status as a State employee. In fact, employees are only receiving the discount because the company is attempting to increase their market share and the employees are members of a large group that happens to be State employees. Additionally, such discounts are usually offered to other types of groups such as local, state and federal employees. In fact, this type of offering further diminishes the potential risk of unwarranted privilege.

Note, however, that the foregoing discussion is based upon a discount on consumer goods or services which are offered to all state employees. This exception is not applicable, however, to discounts or benefits which are offered to subgroups of state employees. For example, the foregoing cell phone discount cannot be offered to only the employees of a specific agency, or only the members of a certain class of employee such as only to members of the Governor’s cabinet. In such cases, the discounts are based on the status as an official, or employee of a specific agency or subgroup, and outside the scope of the exception. Additionally, the law cannot be circumvented by making a service or discount available to “all employees” when it is not practical for all employees to take advantage of the service or discount. For example, the

foregoing cell phone discount is ostensibly offered to all state employees, but the telecommunications company provides coverage in only one small county.

Scenario 2 – Participation in Charitable Events:

Officials of the executive or legislative branch are invited to attend a charity ball, given by a charitable organization as defined in T.C.A. § 48-1-1-501(1). The event is sponsored by a major healthcare corporation that is registered as an employer of a lobbyist² and the event will benefit the Children’s Playhouse Museum. The tickets to this event are in excess of fifty (\$50.00) dollars³. It is the employer’s intent to buy a table of eight seats and to give four of these tickets to their executive staff, and four of these tickets to two legislators and their guests. The ball is “open to participation by persons other than officials in the executive branch, officials in the legislative branch or such official’s immediate family” (e.g., attendance is not restricted to only legislators or only executive branch officials), but a question has been asked as to whether tickets to such an event are “made available to all members of an appropriate class of the general public.”

Discussion:

The exception contained in T.C.A. § 3-6-305(b)(6)(C) permits an official in the executive or legislative branch to attend a charitable event sponsored by an employer of a lobbyist, if such events are (1) open to participation by persons other than an official in the executive or legislative branch or such official’s immediate family, (2) any benefits received are not enhanced due to the status of the official in the executive or legislative branch, and (3) participation in the event is an opportunity and benefit made available to all members of an appropriate class of the general public. It is the interpretation of this last requirement that is at issue.

It is permissible for an employer of a lobbyist, on behalf of a qualified charitable organization, to underwrite or sponsor an event, if all the members of the public or “an appropriate class of the general public” are provided the opportunity and benefit to attend. For example, a large healthcare corporation, an employer of a lobbyist, could sponsor a free admission to the Children’s Playhouse, whereby the corporation pays the normal ticket price to the Children’s Playhouse and the general public is invited for free. Similarly, if the invitation of free attendance is extended to all school teachers or all senior citizens, these groups would qualify as “an appropriate class of the general public.” The fact that some part of the invited appropriate class of the general public may be legislative or executive officials is of no relevance to the larger class’ eligibility for free tickets and thus the charitable event exception to the gift ban would apply.

The legislative or executive officials may receive tickets directly from the host charitable organization, provided that the organization is not an employer of a lobbyist, or from any other entity or individual which is not a lobbyist or employer of a lobbyist. Moreover, if the value of a ticket provided by an employer of a lobbyist to a charitable event is less than fifty (\$50.00) dollars, it may qualify under the in-state event exception set forth in T.C.A. §3-6-305(b)(10). Additionally, if all members of the Legislature are invited and the tickets are less than fifty

² The charitable event exception being discussed in these Guidelines is not available to lobbyists under the statute.

³ See T.C.A. § 3-6-305(b)(10) with regard to a gift ban exception for in-state events.

(\$50.00) dollars, it may qualify for the exception under T.C.A. § 3-6-305(b)(8). Furthermore, if the value of the ticket is more than fifty (\$50.00), the official could reimburse the employer of the lobbyist for the value of the ticket. However, if the employer of a lobbyist is not offering tickets or free admission to an appropriate subgroup of the public and the ticket is greater than \$50, no exception to the gift ban would apply. Thus, in Scenario 2, because the healthcare corporation is only offering the free tickets to its own employees and to selected legislators, no exception applies and the legislators will be required to reimburse the employer for their free tickets to the charity ball.

Therefore, unless admission to the charitable event is made available to “an appropriate class of the general public”, a legislative or executive official may not accept a ticket or sponsorship to attend the event from an employer of a lobbyist, unless one of other exceptions contained in the statute is met.